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one Doyle, a resident of Pennsylvania, without filing the required stipulation. Upon the death of Doyle, the plaintiff sued on the policy, serving process on the deputy insurance commissioner. *Held*, that plaintiff could not recover. *Old Wayne Mut. Life Ass'n. v. Flynn* (1903), — Ind. App. —, 66 N. E. Rep. 57.

An insurance company, said the court, can not evade the provisions of the statute by failing to file the required stipulation. But to give the court jurisdiction, there must be service of process. And where a special mode of service is provided by statute, such mode must be followed; citing 19 ENC. PL. AND PR. 673; *Rehm v. Ger. Ins. Co.*, 125 Ind. 135, 25 N. E. 173; *Guernsey v. Ins. Co.*, 13 Minn. 278; *Reddington v. Land Co.*, 19 Hun. 405; *Express Co. v. Conant*, 45 Mich. 642, 8 N. W. 574; *Desper v. Water Meter Co.*, 137 Mass. 252. And where the statute requires service on an officer, service on his deputy is not sufficient to give the court jurisdiction; citing *Lonkey v. Mining Co.*, 21 Nev. 312, 31 Pac. 57, 17 L. R. A. 351; *City of Watertown v. Robinson*, 69 Wis. 230, 34 N. W. 140; *Amy v. City of Watertown*, 130 U. S. 317, 9 Sup. Ct. 536, 32 L. ed. 946; *Tallman v. Railroad Co.*, 45 Fed. 156; *Chambers v. Manufactory*, 16 Kan. 270. By the great weight of authority, a corporation cannot evade liability on its contracts by setting up its own failure to comply with the statutory requirements. *Phoenix Ins. Co. v. Pa. Co.*, 134 Ind. 215, 20 L. R. A. 405 (note), 33 N. E. 970; *Foster v. Lumber Co.*, 5 S. D. 57, 23 L. R. A. 490 (note); *Swan v. Ins. Co.*, 96 Pa. St. 37; *Watertown F. Ins. Co. v. Rust*, 141 Ill. 85, 30 N. E. —; *Pennypacker v. Ins. Co.*, 80 Ia. 56, 8 L. R. A. 236, 45 N. W. 408. On this general subject see note to *Edison Gen. Elec. Co. v. Navigation Co.*, 24 L. R. A. 315. But the corporation must be served with process. *St. Clair v. Cox*, 106 U. S. 350, 27 L. ed. 222; *Golden v. Morning News*, 156 U. S. 518. And it has been held that jurisdiction cannot be acquired where it appears from the plaintiff's own pleading that defendant was only served by substituted service, and defendant has not appeared to plead to the jurisdiction, and it is not shown that he has had notice, actual or constructive. *Lubrano v. Imperial Council*, 20 R. I. 27, 38 L. R. A. 546, 37 Atl. 345; *Rothrock v. Ins. Co.* 23 L. R. A. 863, 161 Mass. 423, 37 N. E. 206. Cases on the precise point involved in the principal case are scarce, and seem to support the doctrine there laid down, though it has been held that where an officer designated a clerk to receive service for him, and afterward made a written admission of service, the court obtained jurisdiction. *The South Pub. Co. v. Fire Ass'n* 67 Hun. 41. As a general rule, the authority of a deputy, unless otherwise limited, is commensurate with that of the officer himself. MECHAM ON PUBLIC OFFICERS, § 570. But a statutory mode of service upon a foreign corporation is exclusive and must be followed. 6 THOMPSON ON CORPORATIONS, § 7503; *Great West Mining Co. v. Min. Co.*, 12 Colo. 46, 13 Am. St. Rep. 204; *Southern Express Co. v. Craft*, 43 Miss. 508. Furthermore, a statute authorizing substitute service must be strictly followed. *Merrill v. Montgomery*, 25 Mich. 73; *Hoen v. R. Co.*, 64 Mo. 561; *St. L. etc. Ry. Co. v. Dorsey*, 47 Ill. 288. On these principles the case seems rightly decided.

INSURANCE—POLICY INSURING AGAINST LOSS FROM LIABILITY FOR INJURIES DOES NOT INSURE AGAINST LOSS FOR DEATH.—The defendant Insurance Company insured the plaintiff railway against loss from liability to every traveler who might "accidentally sustain bodily injuries under circumstances which shall impose upon the insured a common law or statutory liability for such injuries." A traveler on plaintiff's road died instantly and without conscious suffering in an accident for which plaintiff was responsible. *Held*, that plaintiff could not recover on the policy. *Worcester and Suburban*

Street Railway v. Traveler's Insurance Co. (1902), 180 Mass. 263, 62 N. E. 364, 57 L. R. A. 629.

The court reasoned as follows: In Massachusetts a statutory action lies for the death of a person, not as an asset of the estate but for the benefit of the widow, children or other near relatives. But an action for injuries accrues to the person injured and survives in case of his death. The action for injuries and the one for death are distinct, and cases in this state have so held. Therefore, said the court, insurance may be taken out against one liability or against both. And a policy which by its terms insures against one liability cannot be construed to insure also against the other. Morton and Barker, J. J., dissented, contending that the policy should be construed not according to the literal sense of the words, but according to the nature of the contract and the situation of the parties. With such a construction, they said, it seems difficult to believe that the parties intended to effect only a partial insurance against loss from accidents. There seems to be no other case in point. Whether the cause of action arising from injuries is distinct from that arising from death, is not without dispute. The weight of authority seems to be in favor of the distinction. On this subject see *Louisville & N. R. Co. v. McElwain*, 98 Ky. 700, 34 S. W. 236, 34 L. R. A. 788 (and exhaustive note); *Sweetland v. C. & G. T. Ry. Co.*, 117 Mich. 329, 75 N. W. 1066, 43 L. R. A. 568; *Hill v. R. R. Co.*, 178 Pa. St. 223, 35 Atl. 997, 35 L. R. A. 196; *Brown v. C. & N. W. Ry. Co.* 102 Wis. 137, 78 N. W. 771, 44 L. R. A. 579. This question, however, was not raised by the dissenting judges. They contended for a construction of the policy that would insure against liability for either cause of action.

LIMITATION OF ACTIONS—GUARANTY.—Defendant guaranteed the payment of a note at maturity. The payee neglected to bring suit, and the statute of limitations ran in favor of the maker. The payee then sued the guarantor. *Held*, that the guarantor was liable, although the action against the principal was barred. *Seabury v. Sibley* (1903), — Mass. —, 66 N. E. Rep. 603.

The rule announced in this decision is subject to some question. The contrary doctrine is laid down in *Ohio v. Blake*, 2 Ohio St. 147; *Bridges v. Blake*, 106 Ind. 332, 6 N. E. 833; *Auchampaugh v. Schmidt*, 70 Iowa 642, 27 N. W. 805, 59 Am. Rep. 459; *Bank v. Conway*, 18 Ohio 234, and it must be admitted that there is force in the argument, that since a guarantor can set up any meritorious defense available to the principal, he should not be compelled any more than the principal is, to preserve the evidence of this defense for a longer period than that provided by the statute of limitations. The court cites a number of cases to sustain its view: *Bull v. Coe*, 77 Cal. 54, 11 Am. St. Rep. 235; *Willis v. Chowning*, 90 Tex. 617, 40 S. W. 395, 59 Am. St. Rep. 842; *Moore v. Gray*, 26 Ohio St. 525; *Banks v. Maryland*, 62 Md. 88; *Smith v. Gilliam*, 80 Ala. 296; *Sibley v. McAllaster*, 8 N. H. 389. These cases, however, cannot be taken as strictly applicable. They are to the effect that a surety is not discharged by the failure of the creditor to present his claim against the estate of the principal in the time provided by the administration laws. This principle is universally admitted for the reason that the death of the principal leaves the surety primarily liable, and the creditor may proceed at once against the surety without having presented his claim to the administrator at all. *Scantlin v. Kemp*, 34 Tex. 388. The principal case is supported directly by *Carter v. White*, 25 Ch. D. 666, and by the general doctrine announced in *Ray v. Brenner*, 12 Kan. 105, and *McKenzie v. Ward*, 58 N. Y. 541, 17 Am. Rep. 281.